IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

Bail Appl..No. 7508 of 2007()

CRIME 289/07 OF KOZHINJAMPARA POLICE STATION

PETITIONERS/ACCUSED

---

1. KANDAMUTHAN, AGED 70 YEARS,
   S/O.MAYANKUTTY, VALLARA, NATTUKAL POST,
   NELLEPULLY, CHITTUR TALUK, PALAKKAD DISTRICT.

2. MITHRAN, AGED 45 YEARS,
   S/O.NARAYANA SWAMI, AREEKKAL,
   PUTHUSSERY.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.RAJAN VELLOTH
SRI.A.S.SABU

RESPONDENTS: STATE

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7508 OF 2007 A

Dated this the 6th day of December, 2007

O R D E R

Application for anticipatory bail. There are two petitioners. The learned Public Prosecutor submits that the 2nd petitioner though arrayed as the 2nd accused in the FIR, is not required to be arrested now as investigation has revealed that he has no contumacious or culpable role. Recording that submission, the claim for anticipatory bail of the 2nd petitioner can be dismissed.

2. The 1st petitioner is the father of the de facto complainant. The 2nd petitioner is the son-in-law of the 1st accused i.e., the brother-in-law of the de facto complainant. There was some exchange of words and quarrel in the house of the 1st accused. He is alleged to have taken a chopper and inflicted serious injuries of his son, the victim. The victim suffered a serious cut injury and fracture of the femur. Investigation is in progress. The 1st petitioner has not been arrested yet.

3. The learned counsel for the 1st petitioner submits that

the 1st petitioner is absolutely innocent. He is the father of the victim. There was no contumacious intent at all. The 1st petitioner is aged about 70 years. In any view of the matter, anticipatory bail may be granted to the 1st petitioner and he may not be subjected to the trauma of arrest and detention, it is prayed.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that notwithstanding the blood relationship between the 1st accused and the victim and the advanced age of the 1st petitioner, this is not a fit case where extraordinary equitable discretion under Section 438 Cr.P.C. can or ought to be invoked in favour of the 1st petitioner. There is no contention even that the disputes have been settled.

5. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. This, I agree with the learned Public Prosecutor, is a fit case where the 1st petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

6. In the result, this petition is dismissed. Needless to

say, if the 1st petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

aks